Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *D. B. v. Canada Employment Insurance Commission*, 2016 SSTGDEI 136

Tribunal File Number: GE-16-1539

BETWEEN:

D. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Teresa M. Day

HEARD ON: October 12, 2016

DATE OF DECISION: October 25, 2016

REASONS AND DECISION

PERSONS IN ATTENDANCE

The Appellant attended the hearing of her appeal via teleconference.

INTRODUCTION

[1] The Appellant established a claim for regular employment insurance benefits (EI benefits) effective September 6, 2015. The Respondent, the Canada Employment Insurance Commission (Commission), subsequently investigated the Appellant's reason for separation from employment and, on January 8, 2016, advised the Appellant she would not receive EI benefits because the Commission had determined that she voluntarily left her employment with District 69 Society of Organiz (SOS) on September 22, 2015 without just cause within the meaning of the *Employment Insurance Act* (EI Act).

[2] On January 14, 2016, the Appellant requested the Commission reconsider its decision, stating that she quit her job at SOS because she was attending school and had another job that was in her field of study. On March 29, 2016, following an investigation, the Commission maintained its decision that the Appellant was disqualified from EI benefits because she voluntarily left her employment at SOS without just cause. The Appellant appealed to the General Division of the Social Security Tribunal of Canada (Tribunal) on April 15, 2016.

[3] The hearing was held by teleconference because that form of hearing respects the requirement under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit.

ISSUE

[4] Whether an indefinite disqualification from EI benefits should be imposed upon the Appellant because she voluntarily left her employment at SOS without just cause.

EVIDENCE

[5] The Appellant made an application for EI benefits on September 2, 2015 (GD3-3 to GD3-17). On her application, the Appellant stated that her last employer was Arrowsmith Lodge (Arrowsmith), that she worked for Arrowsmith from May 8, 2014 until September 1, 2015, and that the reason she was no longer working was due to a shortage of work (GD3-4 to GD3-5). The Appellant indicated that she would be returning to work at Arrowsmith, but was uncertain as to when that would happen (GD3-4).

[6] The Appellant was asked if she had any other employers in the 52 weeks prior to her application and answered: "No" (GD3-7).

[7] The Appellant also indicated that she was taking a training program and completed a Training Questionnaire (GD3-9 to GD3-10), in which she stated she was taking an approved course as part of a government-sponsored Employment/Skills Development program that had been authorized by Amber Education. The Appellant identified the course as "Activity Assistant" at North Island College, and indicated the course would run from September 2, 2015 to December 18, 2015 (GD3-9).

[8] A Record of Employment (ROE) was provided by Arrowsmith (GD3-18), which confirmed that the Appellant worked there from May 8, 2014 until her last day of work on September 1, 2016, and gave the reason for separation as "Shortage of Work/End of contract or season".

[9] The Appellant established a claim effective September 6, 2015 (GD4-1).

[10] However, after the start of her claim, another ROE was received for the Appellant from a different employer, namely SOS.

[11] On October 29, 2015, SOS issued an ROE (GD3-20) which indicated that the Appellant worked there as a "Child, Youth & Family Worker-Casual" between June 17, 2015 and September 22, 2015, and which gave the reason for separation as "Quit".

[12] On November 3, 2015, an agent of the Commission spoke with the Appellant about her reason for separation from her employment at SOS and documented the conversation in a Supplementary Record of Claim (GD3-22). The agent made the following notation:

> "Claimant stated they wanted more information from her past. She did not want to share the information. Stated that this was not the way things are done today as she has given them a document about the past but they stated it was their protocol. Stated she needs to talk to her program supervisor K. as this is a quit and requires a decision to be made. Understood."

[13] On November 25, 2015, the Appellant was contacted by the Commission and completed a Voluntary Leaving Questionnaire (GD3-23 to GD3-24), in which the gave the following reason for quitting her employment at SOS:

> "It was a summer job and I was not getting the hours needed. I already have another job and going to school. I didn't need the job and I didn't want to just wait around. I was basically just hired for summer relief." (GD3-23)

[14] Another agent of the Commission took over the investigation and spoke with the Appellant on December 29, 2015 (see Supplementary Record of Claim at GD3-25). The agent noted the Appellant's statements that the job at SOS was summer on-call employment, that she already had a year-round job, and that she couldn't work two on-call jobs while going to school. When the agent pointed out that both jobs were on-call jobs and queried why the Appellant could not work both jobs, the Appellant answered that she wasn't getting many hours from SOS and she was working at Arrowsmith, so she quit SOS. The Appellant was asked to provide the agent with an authorization to quit form in order to verify if she had obtained the required authorization from Amber Education to quit her job at SOS.

[15] The agent also spoke with a representative of SOS (see Supplementary Record of Claim at GD3-26) and noted the following information obtained from the employer:

(a) Contrary to the Appellant's statements, her job at SOS was not a summer position or a temporary position: the Appellant's position at SOS was a permanent, on-call position.

(b) It was the employer's belief that the Appellant quit because she did not want to complete the mandatory RCMP police background check.

[16] On January 8, 2016, the agent telephoned the Appellant and advised her of the determination that she quit her employment at SOS without just cause and that a disqualification would be imposed on her claim. In a Supplementary Record of Claim documenting the call (GD3-27), the agent made the following notation:

> "She said she kept her other job – I noted she only worked a few hours the end of October & beginning of November with them and nothing else since; she said she was going to school full time and couldn't take any other hours. That job is also on-call and the work is sporadic. I explained that to quit to keep a job that only offers sporadic employment and to focus on school does not amount to just cause. The principles for adjudicating a quit does not change even on approved training.
>
> She replied that she didn't quit Arrowsmith, she kept her job in her field and for what she was going to school for, she just left that temporary summer job; I explained the employer stated that job was a permanent casual on-call position, not a summer job, regardless of what she is calling it, had she not quit she could still be picking up shifts now."

[17] The Appellant was also advised by the agent that the Commission failed to put a stop payment on the Appellant's claim when the ROE from SOS was received and worked on her claim after that, such that the disqualification was imposed as of December 20, 2015 instead of retroactive to her last week of work with SOS in September 2015 (GD3-27).

[18] By letter dated January 8, 2016 (GD3-28 to GD3-27), the Commission confirmed that the Appellant was disqualified from EI benefits because she voluntarily left her employment with SOS on September 22, 2015 without just cause within the meaning of the EI Act; and that the disqualification would be effective from December 20, 2015.

[19] On January 14, 2016, the Appellant requested the Commission reconsider its decision, citing the fact that she quit her job at SOS because she was going to school and working at a job in her field of study, and not getting any hours at SOS in any event (GD3-30 to GD3-31), and stating that her job at Arrowsmith, being a job in her field, "far out weighed" her job at SOS.

[20] A different agent of the Commission contacted the Appellant about her request for reconsideration and documented their call in a Supplementary Record of Claim (GD3-32). The agent noted the Appellant's confirmation that she did not have an authorization to quit form to support that she was approved by Amber Education to quit her job at SOS. The agent then made the following notation:

> "The claimant explained that she already had another on-call job so that is the reason why she quit in order to focus on school.
>
> I pointed out to the claimant that she was laid off from that job on September 1st 2015 due to shortage of work. So why not keep that other job while going to school?
>
> The claimant explained that she considered that she was still employed with that other employer because she has been with them for 2 years and the position was related to her school. The claimant was able to pick shifts from that other employer in around December 2015.
>
> I explained to the claimant that she could have at least remain employed from September 2015 to December 20, 2015 but she chose to quit in order to focus in school."

[21] By letter dated March 29, 2016, the Commission advised the Appellant that its original decision that she had voluntarily left her employment at SOS without just cause was maintained (GD3-33 to GD3-34).

[22] In her appeal materials (GD2), the Appellant included a chronology of events and repeated her explanation for quitting her employment at SOS (see GD2-4 to GD2-10).

At the Hearing

[23] The Appellant testified that she disputes the information in Box 11 of the ROE from SOS (which gives the last day for which the Appellant was paid as September 22, 2015), and stated that she gave notice to SOS on August 27, 2015 and that the last day she worked at SOS was "around the same time". The Appellant stated that she "did not work at SOS at all in September" because she told them she would not be available after September 2, 2015 because she would be going to school. The Appellant further stated that the person who prepared the ROE "is just an office clerk and didn't deal with my resignation".

[24] The Appellant testified that the SOS programs ran between 3pm – 8pm, Monday to Friday, and would have conflicted her attendance at school. According to the Appellant, she drove to school in X three times/week, and this meant leaving at 4pm to attend classes that went from 5pm – 9pm on Tuesdays, Thursdays, and Saturdays between September 2, 2015 to December 18, 2015. Referring to SOS, the Appellant stated:

> "So I wasn't available. I was of no benefit to them. So that's why I gave notice."

[25] The Appellant also testified that she was not laid off by Arrowsmith. According to the Appellant, Arrowsmith issued an ROE because there was a shortage of work, but she did pick up "occasional hours" at Arrowsmith on weekends in October and November 2015.

[26] The Appellant concluded her testimony by stating that she thinks "it's a joke" that she's been denied EI benefits because she went to school to better herself and get work experience in her field. The Appellant stated that she quit SOS for two (2) reasons: (a) she was not available during the hours they needed her because she was going to school, and (b) she wanted to focus on school and getting job experience in her field through her job at Arrowsmith; and that she now has "a full-time job to show for it".

SUBMISSIONS

[27] The Appellant submitted that she had just cause for voluntarily quitting her job at SOS and that she should not penalized for going to school and trying to better herself.

[28] The Commission submitted that the Appellant's approval from Amber Education to attend a training course pursuant to section 25 of the EI Act does not exempt her from sections 29 and 30 of the EI Act. Therefore, the Appellant must have a "Counsel to Leave Employment" letter or form from the designated official who referred the Appellant for training pursuant to section 25 of the EI Act (namely: Amber Education) ***or*** she must prove she had just cause for leaving her employment at SOS in order to be entitled to EI benefits. The Appellant did not obtain the required counsel to quit, and she has not proven she had just cause for leaving her employment at SOS. Considering all of the evidence, a reasonable alternative to leaving would have been to remain employed on the permanent on-call list until such time as she received an authorization to quit from Amber Education. Instead, the Appellant made a personal decision to

quit her job at SOS in order to focus on her studies and, because her decision to quit SOS was not made upon the recommendation of Amber Education, she cannot be considered to have shown just cause for voluntarily leaving the employment.

ANALYSIS

[29] The relevant legislative provisions are reproduced in the Annex to this decision.

[30] As a preliminary matter, the Tribunal acknowledges that the Commission failed to put a stop payment on the Appellant's claim when the ROE from SOS was received and worked on her claim after that, such that the disqualification was imposed as of December 20, 2015 instead of retroactive to the Appellant's last week of work with SOS in September 2015 (see Supplementary Record of Claim GD3-27). The Appellant, therefore, received EI benefits for the entire period of her training course (September 2, 2015 to December 18, 2015) despite the Commission's decision that she voluntarily quit her employment at SOS on September 22, 2015. However, as a result of the Commission's inadvertent administrative error, no overpayment was created (GD3-27).

[31] The Appellant, therefore, has appealed the disqualification imposed on her claim as of December 20, 2015.

[32] As the Appellant has provided no evidence that she obtained a "Counsel to Leave Employment" letter or form from Amber Education (the authorizing official pursuant to section 25 of the EI Act in the Appellant's case), the Tribunal finds that the Appellant did not have the required authorization to quit her job at SOS.

[33] The Tribunal the considered whether the Appellant had just cause for voluntarily leaving that employment.

[34] Section 30 of the EI Act stipulates that a claimant who voluntarily leaves her employment is disqualified from receiving any benefits unless she can establish "just cause" for leaving.

[35] It is a well-established principle that "just cause" exists where, having regard to all the circumstances, on balance of probabilities, the claimant had no reasonable alternative to leaving the employment (*White 2011 FCA 190, Macleod 2010 FCA 301, Imram 2008 FCA 17,*

Astronomo A-141-97, Tanguay A-1458-84). The list of circumstances enumerated as "just cause" in paragraph 29(c) is neither restrictive nor exhaustive, but delineates the type of circumstances that must be considered (*Campeau 2006 FCA 376; Lessard 2002 FCA 469*).

[36] The initial onus is on the Commission to show that the Appellant left her employment voluntarily; once that onus is met, the burden shifts to the Appellant to show that she left her employment for "just cause" (*White, (supra); Patel A-274-09*).

[37] The Tribunal finds that the Appellant left her employment with SOS voluntarily. It is undisputed that the Appellant took the initiative to sever the employment relationship. While there is conflicting evidence as to when the Appellant's last day of work at SOS was (the ROE says September 22, 2015 but the Appellant testified it was August 27, 2015), the Tribunal accepts the Appellant's credible testimony that she gave notice to SOS that she was leaving her job on August 27, 2015 and that her last day of work at SOS was "around the same time" because she was starting school on September 2, 2015. For purposes of this decision, the Tribunal finds that the Appellant voluntarily left her job at SOS on August 27, 2015.

[38] The onus of proof then shifts to the Appellant to prove that she had no reasonable alternative to leaving her job when she did (*White, (supra), Patel, (supra)*).

[39] The Tribunal must consider the test set out in sections 29 and 30 of the EI Act and the circumstances referred to in subsection 29(c) of the EI Act, and determine whether any existed at the time the Appellant left her employment. These circumstances must be assessed as of that time (*Lamonde A-566-04*), **namely the day she left: August 27, 2015.**

[40] It is not imperative that the Appellant fit precisely within one of the factors listed in subsection 29(c) of the EI Act in order for there to be a finding of "just cause". The proper test is whether, on the balance of probabilities, the Appellant had no reasonable alternative to leaving her employment, having regard to all the circumstances, including but not limited to those specified in paragraphs 29(c)(i) to (xiv) of the EI Act (*Canada (Attorney General) v. Landry (1993) 2 C.C.E.L. (2d) 92 (FCA)*).

[41] In the present case, the Appellant has repeatedly and emphatically stated that she quit her job at SOS because she would not be available during the hours SOS needed her as she

would be attending her authorized training course ***and*** because she wanted to focus on school and the job she had with Arrowsmith, which was valuable work experience in her field of study. This is not one of the enumerated factors in subsection 29(c) of the EI Act, but it is a situation that has been widely considered in the jurisprudence with respect to "just cause" for leaving an employment.

[42] The Federal Court of Appeal has clearly and consistently held that voluntarily leaving one's job to attend a course that is not authorized by the Commission does not constitute just cause within the meaning of the EI Act: *Shaw, FCA 41-02, Tourangeau, A-30-00, and Martel, A-1691-92.* There is, however, a narrow exception: claimants ***who leave an employment*** to take a course ***on the recommendation*** of an authority designated by the Commission, or provinces/territories who have entered into a Labour Market Development Agreement with the Government of Canada are considered to have just cause for leaving that employment provided they leave within a reasonable period. Unfortunately, while the Appellant was referred by an authorized government official (in this case: Amber Education) to attend the training course in question, she was not authorized to leave her employment at SOS on the recommendation of Amber Education. As such, she is outside of the exception.

[43] Without first obtaining an authorization to quit her job at SOS from Amber Education, the Appellant's decision to quit SOS can only be considered a personal decision in the circumstances. A decision to leave a job for strictly personal reasons, such as to focus on the training course and the other on-call job that was within her field of study (as described by the Appellant), may well be good cause for leaving an employment. However, the Federal Court of Appeal has clearly held that good cause for quitting a job is not the same as "just cause" (*Laughland 203 FCA 129*), and that it is possible for a claimant to have good cause for leaving their employment, but not "just cause" within the meaning of section 29 of the EI Act (*Vairumuthu 2009 FCA 277*). The Federal Court of Appeal has also clearly held that leaving one's employment to improve one's situation – be it the nature of the work, the pay or other lifestyle factors – does not constitute just cause within the meaning of the EI Act (*Langevin 2001 FCA 163, Astronomo A-141-97, Tremblay A-50-94; Martel A-169-92, Graham 2001 FCA 311; Lapointe 2009 FCA 147; and Langlois 2008 FCA 18*).

[44] The Tribunal finds that the evidence does not support the Appellant's contention that she would not have been available to work at SOS while she was in school. The Appellant's hours at SOS were sporadic prior to her quitting (see GD3-20 for the 42 insurable hours accumulated in the 3 months prior to the quit) and, while the SOS programs ran on weekdays (Monday to Friday), the Appellant only went to school on 2 weekdays (Tuesdays and Thursdays). The Tribunal also gave weight to the appellant's testimony that she only picked up "occasional hours" from Arrowsmith on weekends during her course. It is therefore reasonable to think that the Appellant would have been able to arrange her schedule to continue her periodic shifts at SOS while she was in school.

[45] The Tribunal finds that, in spite of her desire to complete her training, the Appellant had reasonable alternatives to quitting her job, namely to remain employed by SOS, or to continue working at SOS and contact Amber Education (as the government authorized official) to secure an authorization to quit her employment at SOS. While the Tribunal acknowledges the Appellant's legitimate desire to improve her life by training to become an Activity Assistant, the Appellant cannot expect those who contribute to the employment insurance fund to bear the costs of her unilateral decision to quit her job at SOS in an attempt to fulfill that desire.

CONCLUSION

[46] Having regard to all the circumstances, the Tribunal finds that the Appellant had reasonable alternatives to quitting, namely to remain employed by SOS or to continue working at SOS and contact Amber Education (as the authorized government official) to secure an authorization to quit her employment at SOS. The Appellant failed to pursue either of these reasonable alternatives and, therefore, failed to prove that she was left with no reasonable alternative but to leave her employment at SOS when she quit her job on August 27, 2015. The Tribunal therefore finds that the Appellant did not demonstrate just cause for voluntarily leaving her employment at SOS on August 27, 2015 and, therefore, is disqualified from receipt of EI benefits pursuant to sections 29 and 30 of the EI Act.

[47] The appeal is dismissed.

Teresa M. Day
Member, General Division - Employment Insurance Section

ANNEX

THE LAW

29 For the purposes of sections 30 to 33,

(a) *employment* refers to any employment of the claimant within their qualifying period or their benefit period;

(b) loss of employment includes a suspension from employment, but does not include loss of, or suspension from, employment on account of membership in, or lawful activity connected with, an association, organization or union of workers;

(b.1) voluntarily leaving an employment includes

(i) the refusal of employment offered as an alternative to an anticipated loss of employment, in which case the voluntary leaving occurs when the loss of employment occurs,

(ii) the refusal to resume an employment, in which case the voluntary leaving occurs when the employment is supposed to be resumed, and

(iii) the refusal to continue in an employment after the work, undertaking or business of the employer is transferred to another employer, in which case the voluntary leaving occurs when the work, undertaking or business is transferred; and

(c) just cause for voluntarily leaving an employment or taking leave from an employment exists if the claimant had no reasonable alternative to leaving or taking leave, having regard to all the circumstances, including any of the following:

(i) sexual or other harassment,

(ii) obligation to accompany a spouse, common-law partner or dependent child to another residence,

(iii) discrimination on a prohibited ground of discrimination within the meaning of the *Canadian Human Rights Act*,

(iv) working conditions that constitute a danger to health or safety,

(v) obligation to care for a child or a member of the immediate family,

(vi) reasonable assurance of another employment in the immediate future,

(vii) significant modification of terms and conditions respecting wages or salary,

(viii) excessive overtime work or refusal to pay for overtime work,

(ix) significant changes in work duties,

(x) antagonism with a supervisor if the claimant is not primarily responsible for the antagonism,

(xi) practices of an employer that are contrary to law,

(xii) discrimination with regard to employment because of membership in an association, organization or union of workers,

(xiii) undue pressure by an employer on the claimant to leave their employment, and

(xiv) any other reasonable circumstances that are prescribed.

30 (1) A claimant is disqualified from receiving any benefits if the claimant lost any employment because of their misconduct or voluntarily left any employment without just cause, unless

(a) the claimant has, since losing or leaving the employment, been employed in insurable employment for the number of hours required by section 7 or 7.1 to qualify to receive benefits; or

(b) the claimant is disentitled under sections 31 to 33 in relation to the employment.

(2) The disqualification is for each week of the claimant's benefit period following the waiting period and, for greater certainty, the length of the disqualification is not affected by any subsequent loss of employment by the claimant during the benefit period.

(3) If the event giving rise to the disqualification occurs during a benefit period of the claimant, the disqualification does not include any week in that benefit period before the week in which the event occurs.

(4) Notwithstanding subsection (6), the disqualification is suspended during any week for which the claimant is otherwise entitled to special benefits.

(5) If a claimant who has lost or left an employment as described in subsection (1) makes an initial claim for benefits, the following hours may not be used to qualify under section 7 or 7.1 to receive benefits:

(a) hours of insurable employment from that or any other employment before the employment was lost or left; and

(b) hours of insurable employment in any employment that the claimant subsequently loses or leaves, as described in subsection (1).

(6) No hours of insurable employment in any employment that a claimant loses or leaves, as described in subsection (1), may be used for the purpose of determining the maximum number of weeks of benefits under subsection 12(2) or the claimant's rate of weekly benefits under section 14.

(7) For greater certainty, but subject to paragraph (1)(a), a claimant may be disqualified under subsection (1) even if the claimant's last employment before their claim for benefits was not lost or left as described in that subsection and regardless of whether their claim is an initial claim for benefits.